IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 3812/1998

DR. R.N. PRASAD & ORS. Vs. UNIVERSITY OF RAJASTHAN

Date: 15.11.2006.

HON'BLE MR. K.S. RATHORE, J.

Mr. Praveen Jain for the petitioner.
Mr. A.K. Sharma with
Mr. Mukesh Meena for the respondent.

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Brief facts of the case are that some of the petitioners were initially appointed as Lecturer (Associate Professor) on 18.09.73. The posts of Associate Professor in Chemistry were advertised and the selection committee selected and recommended the petitioners vide recommendation dated 23.01.87. The name of the petitioners have been mentioned at S.No. 3 to 7 in the order of merit, whereas the name of Dr. Om Dutt Gupta was mentioned at S.No. 8, below the name of the petitioners.

Vide order dated 17.08.1992, the pay of Dr. Om Dutt Gupta was fixed at Rs. 3,825/- per month in the pay scale of Rs. 3700-5700/- w.e.f. 15.02.87. It is not disputed that all the petitioners including Dr. Om Dutt

Gupta were appointed vide order dated 14.02.87 in the same pay scale.

The controversy arose when vide order dated 17.08.92, the pay of Dr. Om Dutt Gupta was fixed at Rs. 3,825/- per month ignoring the fact that Dr. Om Dutt Gupta was junior than the petitioners in the merit list prepared by the Selection Committee. Therefore, the petitioners filed a representation to the Registrar, University to fix them also at Rs. 3,825/- per month w.e.f. 15.02.87. the date from which their junior Dr. Om Dutt Gupta was fixed. The respondent University without considering the case properly, turned down the request of the petitioners vide letter dated 08.05.95. Thereafter the petitioners approached the Vice Chancellor and made their grievance by way of representation dated 09.05.96 and the matter was referred by the Vice Chancellor to the Grievance Committee. The Grievance Committee after examining the matter in detail in its meeting held on 20.09.96, recommended that pay of the petitioners may be stepped up at par with Dr. Om Dutt Gupta and their pay may be fixed at Rs. 3,825/- per month w.e.f 15.02.87 with the date of next increment at part with Dr. Om Dutt Gupta. The recommendations of the Grievance Committee were approved by the Vice Chancellor and thereafter an order

dated 31.12.96 was issued and the pay of the petitioners was fixed at Rs. 3,825/- per month w.e.f. 15.02.87, but suddenly an order dated 15.07.98 was issued by the Deputy Registrar (Estt. I), University of Rajasthan on the basis of some audit objections whereby the earlier order dated 31.12.96 has been cancelled and it was further directed to recover the difference amount which has been paid at par with Dr. Om Dutt Gupta. This order dated 15.07.98 is under challenge in the present writ petition.

Learned counsel for the petitioner referred sub-rule (vi) of Rule 5 of the Rules for Fixation of Pay of University Employees (for short 'the Rules'), which reads as under:-

> **"5. Fixation of pay for in-service candidates:**
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> (vi) Consequent upon fixation of pay if an employee who is senior to another employee in the same cadre and whose pay is fixed at the same stage in the same scale of pay the one fixed for another junior to him and drawing pay at a lower stage shall be granted his next increment on the same date as admissible to his junior if the date of increment of the junior happens to be earlier."

Learned counsel for the respondents have also relied upon Rule 5(vi) of the Rules for Fixation of Pay

of University Employees and submits that prior to entering into the University service, Dr. Om Dutt Gupta had already rendered his services in the Government College, therefore, taking into account the services which were rendered by Dr. Om Dutt Gupta in the Government College, his pay was fixed higher than the petitioners. It is not disputed that Dr. Om Dutt Gupta is junior than the petitioners but the pay fixation was made on the basis of last pay drawn by him. It is also submitted on behalf of the respondents that the petitioners were selected for the post of Associate Professor w.e.f. 15.02.87 by the Selection Committee. It is further submitted that once a persons has been selected by the Selection Committee, the Central pay scale prescribed as Rs. 3700-5700 and since the petitioners were selected in the year 1987, therefore, they are not entitled to get the benefit of selection scale in the year 1986. Thus, the petitioners cannot claim pay scale at part with Dr. Om Dutt Gupta.

I have considered the rival submissions of the respective parties and carefully perused the impugned order dated 15.07.98 passed by the Deputy Registrar, University of Rajasthan as also the Rules for Fixation of Pay of University Employees, more particularly Rule 5(vi) of the Rules.

Sub-rule (vi) of Rule 5 of the Rules speaks about the fixation of pay if an employee who is senior to another employee in the same cadre and whose pay is fixed at the same stage in the same scale of pay the one fixed for another junior to him and drawing pay at a lower stage shall be granted his next increment on the same date as admissible to his junior if the date of increment of the junior happens to be earlier.

I have carefully considered Rule 5(vi) of the Rules and the fact that the petitioners as well as Dr. Om Dutt Gupta were selected on the post of Associate Professor in Chemistry vide order dated 14.02.87.

It is not disputed that at earlier stage, the petitioners and Dr. Om Dutt Gupta were fixed in the pay scale of 3700-5700. The controversy arose when the case of Dr. Om Dutt Gupta was considered and his pay was fixed at Rs. 3,825/- per month. Immediately thereafter the petitioner represented before the respondent and the matter was referred by the Vice Chancellor to the Grievance Committee and the Grievance Committee has considered the claim of the petitioners and allowed them basic pay of Rs. 3,825/- per month and the petitioners were drawing the same, but later on, on account of audit objection, it appears from perusal of

the order impugned dated 15.07.98 (Annexure-7) that fixation order in the pay scale of Rs. 3,825/- w.e.f 15.02.87 has been withdrawn. It was also ordered to recover the difference of amount which has been paid to the petitioner.

It is not disputed that the Grievance Committee has considered the case of the petitioners and it was resolved to grant pay fixation at par with Dr. Om Dutt Gupta and the same has been approved by the Vice Chancellor. The order was passed by the Deputy Registrar, University of Rajasthan on the basis of some audit objections and that too without giving opportunity of being heard to the petitioners, which is per se illegal and contrary to the bare minimum principal of natural justice and also contrary to the ratio decided by the Hon'ble Supreme Court in the case of ***Sahib Ram Vs. State of Haryana & others, decided on 19.09.94 and reported in 1995 Supp (1) SCC 18,*** wherein it was held that upgraded pay scale given due to wrong construction of relevant order by the authority concerned without any misrepresentation by the employee, in such circumstances recovery of the payment already made, restrained. Again the similar view has been expressed by the Hon'ble Supreme Court in the case of ***Union of India & Another Vs. R. Sarangapani &***

others, decided on 15.03.2000 and reported in (2000)4 SCC 335.

In the fact and circumstances of the case, it is no doubt that the impugned order has been passed without giving opportunity of being heard to the petitioners and simply on the basis of the audit report, whereas the pay scale which has been granted to the petitioners was sanctioned by the Grievance Committee and was approved by the Vice Chancellor, University of Rajasthan. Therefore, the impugned order dated 15.07.98 (Annexure-7) deserves to be quashed and set-aside and the same is hereby quashed and set-aside.

The writ petition stands allowed.

(K.S. RATHORE),J.

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